

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND**

THE NATIONAL FEDERATION OF	)	
THE BLIND, et al.	)	
	)	
Plaintiffs,	)	
	)	Civil Action No. 18-01568 (TDC)
v.	)	
	)	
UNITED STATES DEPARTMENT OF	)	
EDUCATION, et al.	)	
	)	
Defendants.	)	

**DEFENDANTS' SECOND CONSENT MOTION TO EXTEND TIME  
TO RESPOND TO PLAINTIFFS' COMPLAINT**

With the consent of Plaintiffs, Defendants, the United States Department of Education (“ED”), Betsy DeVos, in her official capacity as Secretary of ED, and Kenneth L. Marcus, in his official capacity as Assistant Secretary for Civil Rights<sup>1</sup> (collectively, “ED”) respectfully submit this motion to extend the time to file a response to Plaintiffs’ Complaint from August 24, 2018, through and including September 24, 2018. In support of this motion, ED states the following:

1. On May 31, 2018, Plaintiffs filed this action against ED, challenging the agency’s decision to amend and/or modify certain provisions of its Case Processing Manual (“CPM”) as published on March 5, 2018. *See generally* Compl., ECF No. 1. Specifically, the two CPM provisions that are the focus of Plaintiffs’ Complaint are (1) section 108(t), which is one of several grounds pursuant to which the Office for Civil Rights (“OCR”)

---

<sup>1</sup> Pursuant to Rule 25(d), Kenneth L. Marcus, in his official capacity as Assistant Secretary for Civil Rights, is substituted for Acting Assistant Secretary for Civil Rights, Candice Jackson.

may dismiss complaints submitted to OCR, and (2) the removal of the appeals procedures set forth in prior publications of the CPM.

2. On August 3, 2018, Defendants filed a consent motion for extension of time to respond to the Complaint, which this Court granted on August 8, 2018. Pursuant to this Court's August 8, 2018 Order, Defendants' response to Plaintiffs' Complaint is currently due on August 24, 2018. *See* Order, ECF No. 19 (Aug. 8, 2018). With this motion, Defendants respectfully request an additional thirty (30) day extension of time to respond to the Complaint and further state that good cause exists to grant Defendants' request.

3. Since the filing of the Complaint in this matter, the United States Senate confirmed Kenneth L. Marcus as Assistant Secretary for Civil Rights. Through agency counsel, Assistant Secretary Marcus has indicated that he intends to revise the March 5, 2018 CPM. Among the revisions that he intends to make are (1) the deletion of section 108(t), and (2) establishing a new appeals process.

4. Agency counsel has also informed the undersigned that (1) OCR ceased using section 108(t) as a basis for dismissing complaints on May 9, 2018, and (2) between the two month period of March 5, 2018, and May 9, 2018, the vast majority of the complaints that OCR dismissed pursuant to section 108(t) were filed by one individual alleging web accessibility issues for individuals with disabilities. In its letter explaining its decision to dismiss the complaints under section 108(t), OCR stated, *inter alia*, that the recipient continued to have an obligation to comply with requirements regarding its website and that at a later date, OCR may consider conducting a compliance review or directed investigation of the recipient to assess compliance.

5. As relevant here, between May and June 2018, OCR held three webinars on web accessibility to assist schools, districts, state educational agencies, libraries, colleges, and universities in making their websites and online programs accessible to individuals with disabilities. The three webinars addressed many of the issues raised in the complaints dismissed under section 108(t), including design decisions by recipients that make their online programs, services, and activities inaccessible to individuals with disabilities. Approximately 3100 people participated in the three webinars hosted by OCR, with the bulk representing public school districts, public and private 4-year universities, and community colleges or trade schools.

6. As a result of the revisions and modifications to the 2018 CPM that Assistant Secretary Marcus intends to make and ED's ongoing assessment of the actions that recipients may have undertaken in response to OCR's web accessibility webinars, Defendants respectfully request a thirty (30) day extension of time from August 24, 2018, through and including September 24, 2018, to respond to Plaintiffs' Complaint. This additional time will permit ED to evaluate and begin to revise the CPM, and assess the impact of its three webinars, and may obviate the need for further litigation, or at the very least substantially narrow the issues about which the parties will litigate.

7. On August 23, 2018, counsel for Defendants conferred with Plaintiffs' counsel via telephone regarding the relief requested in this motion, and Plaintiffs' counsel stated that Plaintiffs consent to Defendants' second extension request.

Accordingly, with the consent of Plaintiffs, Defendants respectfully request that the Court grant ED an extension of time from August 24, 2018, through and including

September 24, 2018, to respond to the Complaint in this action. Defendants have filed a proposed order with this motion.

Dated: August 24, 2018

Respectfully submitted,

CHAD A. READLER  
Acting Assistant Attorney General

ROBERT K. HUR  
United States Attorney

CARLOTTA WELLS  
Assistant Branch Director

/s/ Tamra T. Moore  
TAMRA T. MOORE (D.C. Bar No.488392)  
Trial Attorney  
United States Department of Justice  
Civil Division, Federal Programs Branch  
20 Massachusetts Avenue, Room 5375  
Washington, DC 20001  
Tel: (202) 305-8648  
Fax: (202) 305-8517  
E-mail: Tamra.Moore@usdoj.gov

Attorneys for Defendants